

United States District Court
Western District of Texas
San Antonio Division

Kimberly Beverly Thomas, Individually and
as Representative of the Estate of Jacqueline
Spotser, Deceased,
Plaintiff,

v.

United States of America, Jose Colon Franqui
in His Individual Capacity, Danita E.
Anderson-Richards in Her Individual
Capacity, and Education Services Center
Region 20,¹
Defendants.

No. 5-19-CV-01365

Notice of Removal and Substitution

Defendant United States of America files this Notice of Removal and Substitution removing the above-entitled action now pending as Cause No. 2019-CI-22420 in the 37th Judicial District Court, Bexar County, Texas.

1. On October 28, 2019, an action was filed as Cause No. 2019-CI-22420 in the 37th Judicial District Court, Bexar County, Texas, entitled KIMBERLY BEVERLY THOMAS, Individually and as Representative of the Estate of Jacqueline Spotser, Deceased, vs. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, JOSE COLON FRANQUI, Individually and in His Official Capacity, DANITA E. ANDERSON-RICHARDS, Individually and in Her Official Capacity; and EDUCATION SERVICES CENTER REGION 20. A copy of Plaintiff's Original Petition and all pleadings are attached hereto as **Exhibit 1**. The United States has not

¹ The State Court action was styled in relevant part as against the EEOC, Jose Colon Franqui, Individually and in His Official Capacity, and Danita E. Anderson-Richards, Individually and in Her Official Capacity. Upon removal, the United States of America is being substituted for the EEOC, Jose Colon Franqui, in His Official Capacity, and Danita E. Anderson-Richards, in Her Official Capacity, pursuant to 28 U.S.C. § 2679(d)(2).

been properly served with the Citation or Petition pursuant to Federal Rule of Civil Procedure 4(i). Trial has not been set or held.

2. Attached hereto as **Exhibit 2** is a certification that Defendants Jose Colon Franqui and Danita E. Anderson-Richards were acting within the scope of their deemed federal employment at all relevant times as alleged in the Petition. Because Plaintiff alleges, in part, she was injured by a federal employee acting within the scope of their employment on behalf of the EEOC, Plaintiff must proceed with this action, if at all, under the FTCA.² The United States is the only proper defendant in an FTCA action. *Galvin v. Occupational Safety & Health Admin.*, 860 F.2d 181, 183 (5th Cir. 1988)

3. This Notice of Removal is made pursuant to the provisions of 28 U.S.C. § 2679(d)(2).

4. Pursuant to the provisions of 28 U.S.C. § 1446(d), a Notice of Filing Notice of Removal will be filed with the 37th Judicial District Court in Bexar County, Texas, a true and correct copy of which is attached hereto as **Exhibit 3**.

5. Pursuant to Local Court Rule CV-3(a), a JS 44, Civil Cover Sheet is attached hereto as **Exhibit 4**.

6. As this federal case is being initiated via removal, a Supplement to JS 44 is attached hereto as **Exhibit 5**.

United States of America provides this Notice that the action now pending in the 37th Judicial District Court, Bexar County, Texas against Defendants Equal Employment Opportunity Commission, Jose Colon Franqui, Individually and in His Official Capacity, Danita E. Anderson-

² Plaintiff might also be bringing constitutional claims against Defendants Jose Colon Franqui and Danita E. Anderson-Richards for due process rights violations. To the extent Plaintiff seeks to bring such claims, the United States would not be substituted as a defendant for those claims.

Richards, Individually and in Her Official Capacity; and Education Services Center Region 20 is removed to this Court.

Respectfully submitted,

John F. Bash
United States Attorney

By: /s/ Matthew Mueller

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Attorneys for Defendant

Certificate of Service

I certify that on November 21, 2019, I electronically filed this document with the Clerk of Court using the CM/ECF system.

- ☒ I also certify that I have mailed this document by United States Postal Service to the following non-CM/ECF participant(s):

Kimberly Beverly Thomas
5711 Castle Brook
San Antonio, Texas 78218

Jose Colon Franqui
5410 Fredericksburg Road, Suite 200
San Antonio, Texas 78220

Danita E. Anderson-Richards
5410 Fredericksburg Road, Suite 200
San Antonio, Texas 78220

Dr. Jeff Goldhorn
Education Services Center Region 20
1314 Hines Avenue
San Antonio, Texas 78208

/s/ Matthew Mueller

Matthew Mueller
Assistant United States Attorney